

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ARNOLD FERGUSON,

Plaintiff,

V.

HANFORD EMPLOYEE WELFARE TRUST, a trust administered in Washington State also known as HEWT; BECHTEL HANFORD INCORPORATED, a Washington Corp.; FLUOR HANFORD INCORPORATED, a Washington Corp.; HARRY LACHER; DOMINIC SANSOTTA; CAROL JOHNSON; BOARD OF TRUSTEES FOR HEWT; and JOHN and JANE DOES (1-50).

## Defendants.

No. CV-11-5124-EFS

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

On April 24, 2012, a hearing occurred in the above-captioned matter. Plaintiff Arnold Ferguson was present, represented by Victor Ro. Richard Birmingham appeared on behalf of Defendants Hanford Employee Welfare Trust (HEWT), Bechtel Hanford Inc., Fluor Hanford Inc., HEWT Board of Trustees, Harry Lacher, Dominic Sansotta, and Carol Johnson (collectively, "Defendants"). Before the Court were Defendants' Motion for Summary Judgment, ECF No. [22](#), and Mr. Ferguson's Motion for Partial Summary Judgment or, in the Alternative, to Continue.<sup>1</sup> ECF No.

<sup>1</sup> Although filed as a summary-judgment motion, Mr. Ferguson's ORDER - 1

1    49. After reviewing the submitted material and relevant authority and  
2 hearing from counsel, the Court is fully informed. This Order  
3 supplements and memorializes the Court's oral ruling granting  
4 Defendants' motion and denying Mr. Ferguson's motion.

5    **A. Facts<sup>2</sup>**

6       In 1993, U.S. Department of Energy (DOE) contractor Westinghouse  
7 Hanford hired Mr. Ferguson to work at the Hanford nuclear facility. In  
8

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9       motion does not include argument seeking summary judgment in his  
10 favor; rather, he asks the Court to either deny Defendants' motion or  
11 to allow discovery to occur before ruling on Defendants' motion.

12       <sup>2</sup> When creating this factual section, the Court 1) believed the  
13 undisputed facts and the non-moving party's evidence, 2) drew all  
14 justifiable inferences therefrom in the non-moving party's favor, 3)  
15 did not weigh the evidence or assess credibility, and 4) did not  
16 accept assertions made by the non-moving party that were flatly  
17 contradicted by the record. See *Anderson v. Liberty Lobby, Inc.*, 477  
18 U.S. 242, 255 (1986); *Scott v. Harris*, 550 U.S. 372, 380 (2007); see  
19 also LR 56.1(d) ("In determining any motion for summary judgment, the  
20 Court may assume that the facts as claimed by the moving party are  
21 admitted to exist without controversy except as and to the extent that  
22 such facts are controverted by the record set forth in (b).").  
23 Undisputed facts are not supported with a citation, while disputed  
24 facts and quotations are supported with a citation to the record.

1 July 1994, Bechtel Hanford ("Bechtel") took over the federal contract at  
 2 the Hanford site. As a result, Mr. Ferguson's employment with  
 3 Westinghouse Hanford ended, and he was hired by Bechtel. As a Bechtel  
 4 employee, Mr. Ferguson obtained medical and life insurance through HEWT,  
 5 an Employee Retirement Income Security Act (ERISA) welfare plan<sup>3</sup> and  
 6 trust, which was solely administered by HEWT's Board of Trustees.<sup>4</sup> The  
 7 benefit plan in effect during Mr. Ferguson's employment was HEWT's  
 8 Hanford Employee Welfare Benefit Plans 2004 Plan ("2004 Employee Plan").  
 9 ECF No. 42-1. The 2004 Employee Plan offered medical, prescription,  
 10 vision, and dental plans; life insurance plans; disability plans;  
 11 flexible spending accounts; and severance pay plans. For eligibility  
 12 rules and definitions, the 2004 Employee Plan directed participants to  
 13 the appropriate plan descriptions. *Id.* at 7.

14 During Mr. Ferguson's employment, the retirement plan in effect was  
 15 the 2004 HEWT Hanford Retiree Welfare Benefit Plans ("2004 Retiree  
 16 Plan"). This 2004 Retiree Plan states:

17 Basic Life Insurance/AD&D

18 Retirees under age 65: coverage of up to two times the

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19  
 20       <sup>3</sup> HEWT is an ERISA welfare plan, not an ERISA pension plan.

21       <sup>4</sup> The HEWT Board of Trustees "has the exclusive responsibility  
 22 and full discretionary authority to control the operation and  
 23 administration of the Plan[] and to make all fiduciary decisions under  
 24 the Plan[], and it has all power necessary to accomplish such  
 25 purposes." ECF No. 42-1 at 2.

1           retirees [sic] base salary rate plus AD&D coverage at the  
2           time of retirement is available on a shared cost basis.

3           Retirees over age 65: coverage of up to one-half times  
4           the retiree's base salary for Basic Life at the time of  
5           retirement is available on an employer-paid basis.

6           ECF No. 25-1 at 3. The 2004 Retiree Plan also states, "An eligible  
7           participant must elect life insurance coverage at termination of  
8           employment. If you do not enroll for life insurance when it is  
9           available or if you allow it to be discontinued or lapse, you may not  
10          again enroll or reinstate the coverage." Id. at 6 (emphasis in  
11         original).

12           In 2005, Bechtel lost its contract with DOE. Bechtel initiated an  
13         involuntary reduction in force program (ROF); Mr. Ferguson was included  
14         in this ROF. Approximately two weeks before the to-be-laid-off  
15         employees' last day of work, Bechtel informed those employees of their  
16         ROF benefits and qualification requirements through an ROF information  
17         packet. ECF No. 25-3. The ROF information packet contained a summary  
18         of all benefits available following the ROF, including life insurance  
19         and post-retirement insurance. The packet also included an Involuntary  
20         Reduction of Force-Benefits Election form ("ROF form"); this ROF form  
21         was only received in the ROF information packet.

22           The ROF information packet states:

23           If you are at least 55 with a minimum of 10 vesting years on  
24           your last day of work, and you are enrolled in HEWT-sponsored  
25           medical and life insurance plans, you are eligible for the  
26           following:

- ✓ Post-Retirement medical and applicable life  
insurance coverage. However, elections must be made  
immediately, at the time of your layoff, if

1 alternate coverage is available, and you are not  
2 eligible for ROF insurance coverage.

3 ✓ If you are eligible for continuing ROF insurance  
4 coverage, medical and life insurance benefits under  
5 post-retirement insurance plans must be elected no  
later than 12 months from the date of your layoff.  
You must have maintained continuous ROF insurance  
coverage to be eligible for post-retirement  
insurance.

6 Id. Mr. Ferguson does not dispute that Bechtel provided each to-be-  
7 laid-off employee with an ROF information packet; however, Mr. Ferguson  
8 does not recall receiving "any documents or notice notifying me of my  
9 obligations to elect post-retirement insurance benefits, including the  
10 \$15,000 life insurance policy and the requirement to opt-in or opt-out  
11 into medical insurance for retirement purposes." ECF No. 47 ¶¶ 2 & 3.

12 On August 23, 2005, Mr. Ferguson participated in an exit interview  
13 with HEWT benefits specialist Cynthia Milton, who administered the ROF.  
14 During the exit interview, Mr. Ferguson elected to continue medical  
15 coverage, Basic Life/Accidental Death and Dismemberment insurance,  
16 dependent life insurance, and personal accident insurance. ECF No. 25-  
17 4. These elections were memorialized on the ROF form, which Mr.  
18 Ferguson brought with him to the exit interview. Both Mr. Ferguson and  
19 Ms. Milton signed the form. Mr. Ferguson paid \$123.13 by check for  
20 three months of the elected benefits coverage. Id. Although he was  
21 more than fifty-five-years old and had more than ten years of service,  
22 Mr. Ferguson contends that Ms. Milton "did not adequately, if at all,  
23 discuss or address post-retirement life insurance matters pertaining to  
24 the \$15,000 life insurance, including but not limited to post-retirement  
25 life insurance and medical insurance." ECF No. 44 ¶ 7.

1       Mr. Ferguson continued to make premium payments to maintain  
2 coverage for his elected benefits for approximately seven additional  
3 months. However, less than one year from his termination date, Mr.  
4 Ferguson failed to continue to pay his ROF insurance premiums. On  
5 October 26, 2006, a letter was sent to Mr. Ferguson advising him that  
6 his "IROF/COBRA continuation coverage under the [HEWT] plan was  
7 terminated on August 23, 2006, due to failure to pay the IROF/COBRA  
8 premium." ECF No. 25-5.

9       In 2008, HEWT issued a revised Hanford Retiree Welfare Benefit Plan  
10 ("2008 Retiree Plan"). Under the 2008 Retiree Plan, a participant under  
11 the age of 65 who elected to retire could receive \$15,000.00 of life  
12 insurance at no cost to the participant.

13       In April 2009, Mr. Ferguson decided he was ready to elect  
14 retirement benefits. He contacted HEWT to determine the status of his  
15 retirement benefits and to request documentation. HEWT advised Mr.  
16 Ferguson that he was not eligible for retirement benefits. Although the  
17 initial information that HEWT relayed to Mr. Ferguson provided the wrong  
18 basis for its denial, ECF No. 25-6 at 52 (advising Mr. Ferguson that he  
19 failed to elect retirement benefits before his last day of work), HEWT  
20 ultimately advised Mr. Ferguson that he was unable to seek retirement  
21 benefits because he failed to timely apply for such within twelve months  
22 of the ROF and to maintain continuous life and medical insurance  
23 coverage, Id. at 63. Mr. Ferguson sought re-evaluation of his denied  
24 application. Id. at 69. HEWT continued to deny his application. Id. at  
25 74-75.

26 ORDER - 6

1       On August 15, 2011, Mr. Ferguson filed this Complaint. ECF No. [1](#).  
2 In his Complaint, Mr. Ferguson asserts the following ERISA claims: 1)  
3 failure to disclose and provide complete and accurate information to Mr.  
4 Ferguson, 2) an inadequate summary plan description, 3) breach of  
5 fiduciary duty, and 4) failure to disclose the availability of HEWT's  
6 retiree life insurance and medical benefits. *[Id.](#)* On January 12, 2012,  
7 Defendants filed their summary-judgment motion. Mr. Ferguson opposes  
8 the motion and, alternatively, seeks leave to conduct discovery.

9 **B. Standard**

10       To analyze a summary-judgment motion in an ERISA action, the Court  
11 does not apply the summary-judgment standards set forth in Federal Rule  
12 of Civil Procedure 56. See *Nolan v. Heald Coll.*, 551 F.3d 1148, 1154  
13 (9th Cir. 2009) (recognizing that a motion for summary judgment is  
14 merely the conduit to bring the legal issue before the court and the  
15 usual summary-judgment tests do not apply). Instead the Court reviews  
16 the HEWT Board of Trustees' denial of Mr. Ferguson's claimed benefits  
17 for an abuse of discretion using an arbitrary or capricious standard.  
18 See *Bendixen v. Stan. Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999),  
19 overruled on other grounds by *Abatie v. Alta Health & Ins. Co.*, 458 F.3d  
20 955, 965 (9th Cir. 2006). Under this arbitrary or capricious standard,  
21 the Board of Trustees' decision will only be set aside if the Board  
22 definitely and clearly committed a mistake. See *Salomaa v. Honda Long*  
23 *Term Disability Plan*, 642 F.3d 666, 676 (9th Cir. 2011). When  
24 conducting this analysis, the Court is confined to the record before the  
25 Board of Trustees unless there is a supported allegation that the Board

1 of Trustees' decision was affected by a conflict of interest. See  
2 *Abatie*, 458 F.3d at 970.

3 Mr. Ferguson seeks leave to depose HEWT employees, including Ms.  
4 Milton, Lynn Ramos, and Heather Goldie-Baker, and to receive and review  
5 additional records to determine whether the Board of Trustees has a  
6 conflict of interest. The Court denies Mr. Ferguson leave to conduct  
7 this discovery because the plan documents clearly provide the Board of  
8 Trustees with the sole discretion to determine benefit eligibility, and  
9 Mr. Ferguson does not dispute that third parties provide the life  
10 insurance and medical insurance. Accordingly, there is no basis to  
11 allow discovery on the unsupported conflict-of-interest claim. Mr.  
12 Ferguson's motion is denied in this regard.

13 **C. Authority and Analysis**

14 For the reasons given below, the Court concludes the Board of  
15 Trustees did not arbitrarily or capriciously deny Mr. Ferguson's claim  
16 for medical and life insurance benefits.

17 First, the ROF signed by Mr. Ferguson at the August 23, 2005 exit  
18 interview evidences that HEWT informed Mr. Ferguson of his ROF benefits  
19 through both the ROF information packet and the exit interview with Ms.  
20 Milton.

21 Second, Mr. Ferguson elected medical insurance and life insurance  
22 by signing the ROF form and writing a check for three months of  
23 coverage. He continued to make premium payments, and he had coverage  
24 for ten months following his termination. His coverage for these  
25 benefits ceased on August 23, 2006, due to his failure to continue to

make premium payments, and in October 2006, he was advised in writing  
that his benefits were terminated. Mr. Ferguson submits that he  
believed that only his medical benefits, not his life insurance  
benefits, were terminated. However, the pertinent documents in the  
record are explicit and clear; none support either that professed belief  
or any reasonable inference of it.

7       Third, because Mr. Ferguson's medical and life insurance premium  
8 payments ceased, he failed to satisfy the ROF post-retirement medical  
9 and life insurance eligibility requirement that he maintain continuous  
10 ROF insurance coverage.

11       Fourth, Mr. Ferguson did not elect such post-retirement benefits  
12 within twelve months of his August 2005 layoff.

13       Fifth, HEWT's retiree plans did not include a free \$15,000.00 life  
14 insurance policy until December 2008. This was more than twelve months  
15 after Mr. Ferguson's August 2005 layoff.

16 For these reasons, the Court finds that Mr. Ferguson failed to  
17 establish that the Board of Trustees' denial of his claim for post-  
18 retirement medical and life insurance coverage was arbitrary or  
19 capricious. There is no evidence showing that the Board of Trustees  
20 failed to comply with the HEWT plan terms or breached a fiduciary duty.  
21 Accordingly, Defendants' summary-judgment motion is granted,<sup>5</sup> and Mr.

5 Defendants ask the Court to award them their reasonable costs.

However, they did not support this request with any legal authority.

Accordingly, the Court does not consider this request at this time.

1 Ferguson's motion is denied.

2 **D. Conclusion**

3 For the above-given reasons, **IT IS HEREBY ORDERED:**

4 1. Mr. Ferguson's Motion for Partial Summary Judgment or, in the  
5 Alternative, to Continue, **ECF No. 49**, is **DENIED**.

6 2. Defendants' Motion for Summary Judgment, **ECF No. 22**, is  
7 **GRANTED**.

8 3. **Judgment** shall be entered in Defendants' favor **with prejudice**.

9 4. All pending motions and hearings are **STRICKEN**.

10 5 This file shall be **CLOSED**.

11 **IT IS SO ORDERED.** The District Court Executive is hereby directed  
12 to enter this Order and furnish copies to counsel.

13 **DATED** this 24th day of April 2012.

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15 \_\_\_\_\_  
16 s/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge

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